THE HONOURABLE SRI JUSTICE V.ESWARAIAH

WRIT PETITION No :3604 of 2007

DATED:26-02-2007

BETWEEN:

Toddy Cooperative Society,
Marikal,
Rep., by its President,
Srinivasulu Goud,
Marikal village,
Peddakothapally Mandal,
Mahaboobnagar District.

..... PETITIONER

AND

The Prohibition and Excise Superintendent,
Nagarkurnool (Excise) Department,
Mahaboobnagar & 2 others.

.....RESPONDENTS

ORDER:

Heard the learned counsel for the petitioner as well as the learned Government Pleader for Prohibition & Excise appearing for the respondents.

2. Petitioner seeks a writ of mandamus declaring the action of the 1st respondent in suspending the licence of the petitioner on 31-01-2007 to run the toddy shop, as illegal, and arbitrary.

3. It is stated that the petitioner-society has been carrying on the business of sale of toddy strictly in accordance with the provisions of the A.P.Excise Act and the Rules made thereunder. It is stated that they never involved in the adulteration of the toddy, and the Excise authorities are cancelling the TFT licences to those who are not able to satisfy the local M.L.A., and the concerned authorities. It is further stated that, in fact, the local M.L.A.,
Sri Jupalli Krishnarao, without having any business whatsoever with regard to the functioning of the toddy shops and without there being any enquiry or personal knowledge about the alleged adulteration of toddy, addressed a letter, dated
14-06-2005, to the Excise Superintendent, Mahaboobnagar, to cancel certain TFT/TCS licence of the respective villages mentioned therein, and the name of Marrikal village is figured at S.No.7. It is stated that the said letter addressed by the M.L.A. is without any justification, whatsoever, and addressing such letters is not within the powers of the

local M.L.A., Though the said allegations are not well founded but without impleading the local M.L.A., it may not be just and proper to deal with the said allegations. It is further stated that based on such a letter only, in fact, the inspection was made in respect of the toddy shop, TCS, Marrikal on 14-11-2006 and the toddy was tested with prescribed chemicals, and it was found that the toddy was free from Formaldehyde. However, on suspicion they have drawn three samples and one of the samples was sent to the Chemical Examiner. It is stated that though the samples were drawn on 14-11-2006, in fact, the same were deposited on

25-11-2006 and the Chemical Analyst gave his report on

29-11-2006, stating that the sample is fermented toddy adulterated with Chloral Hydrate and Diazepam. Based on the said report, dated 29-11-2006, show cause notice, dated 06-12-2006, has been issued calling upon explanation to be submitted within seven days as to why the licence bearing No.1, dated 26-04-2002, of the toddy shop, TCS Marrikal, Mahaboobnagar District, granted upto 31-03-12007, shall not be suspended as a precautionary measure. So far no show cause notice has been issued for cancellation of licence but the said show cause notice has been issued calling upon the licencee as to why the licence should not be suspended. Pursuant to the show cause notice petitioner submitted explanation on 18-01-2007 denying all the allegations and stated that in the spot test the toddy was found free from formaldehyde and therefore, the question of founding it again adulterated with chloral Hydrate does not arise as per the report of the Chemical Examiner. All the allegations were denied, but however, a perusal of the Chemical Analyst report goes to show that the toddy was found adulterated with Diazepam also. Therefore, I am not inclined to suspend the operation of the suspension order as

admittedly the enquiry proceedings are still pending and no show cause notice has been issued proposing to cancel the TCS licence after giving reasonable opportunity.

4. Having regard to the facts and circumstances the Writ Petition is disposed of directing the 1st respondent to give reasonable opportunity by considering the explanation submitted to the show cause notice, requesting to send the second sample bottle to the independent laboratory and the 1st respondent may take steps to send the second sample to the independent laboratory and if on the other sample the Expert also opines that the toddy sample is found adulterated then the licencing authority may issue show cause notice for cancellation and after giving reasonable opportunity appropriate action may be taken. No order as to costs.

V.ESWARAIAH,J

26th February, 2007.
Tsy